JUN 1 2 2017

No. 16A-1191

IN THE

Supreme Court of the United States

DONALD J. TRUMP ET AL.

Applicants,

v.

STATE OF HAWAI'I ET AL.

Respondents.

On Application for a Stay Pending Disposition of a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS

MARY KELLY PERSYN
Counsel of Record
PERSYN LAW & POLICY
912 COLE STREET PMB 124
SAN FRANCISCO, CA 94117
(628) 400-1254
marykelly@persynlaw.com

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS

The American Professional Society on the Abuse of Children seeks to submit an *amicus curiae* brief in this matter, to inform the Court about the effect a stay would have on vulnerable children both inside and outside the United States. On June 7, 2017, *Amicus* notified counsel of record for all parties of its intent to file a brief; all parties consented to this filing. However, *amicus* recognizes that this Court's Rule 37(2)(a) required it to provide notice to the parties at least 10 days before today. *Amicus* respectfully requests leave

to file a brief (which it has submitted separately) notwithstanding its providing notice only on June 7.

Amicus has a substantial interest in the outcome of this case. The American Professional Society on the Abuse of Children ("APSAC") is the leading national organization for professionals serving children and families affected by child maltreatment, including abuse and neglect. APSAC members have extensive historical and scientific experience with juvenile brain development, especially where child maltreatment is involved. Because of this experience, APSAC is qualified to inform the Court about the harmful effects of the additional months of trauma and stress that myriad children will suffer if the Court grants the Government's application for a stay in this case.

However, the Government submitted its application on June 1, 2017, just 11 days ago. The Court ordered a response, with a deadline of today at 3 p.m., on June 2, 2017. While it was possible in principle to notify the parties about an *amicus* brief on June 2, in practice notice on that date was not feasible. *Amicus* and its counsel made diligent efforts to review the Government's application swiftly, assess whether a brief from *amicus* regarding the application would be a helpful contribution to the record, and contact the parties as soon as possible. As noted above, *amicus* provided the requisite notice on June 7, and all parties consented to the filing.

For the foregoing reasons and for good cause, counsel for *amicus* respectfully moves for leave to file a brief as *amicus curiae*.

Respectfully submitted.

MARY KELLY PERSYN
Counsel of Record
PERSYN LAW & POLICY
912 COLE STREET PMB 124
SAN FRANCISCO, CA 94117
(628) 400-1254
marykelly@persynlaw.com

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BRIEF OF *AMICUS CURIAE* AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN IN SUPPORT OF RESPONDENTS

MARY KELLY PERSYN
Counsel of Record
PERSYN LAW & POLICY
912 COLE STREET PMB 124
SAN FRANCISCO, CA 94117
(628) 400-1254
marykelly@persynlaw.com

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D C. 20002

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Tim Gaynor, "UNHCR concerned at reports of sexual violence against refugee women and children" (Oct. 23, 2015), at http://www.unhcr.org/news/latest/2015/10/562a3bb16/unhcr-concerned-reports-sexual-violence-against-refugee-women-children.html 10

M. Jernigan and J. H. Daniel, Racial Trauma in the Lives of Black Children and Adolescents: Challenges and Clinical Implications, 4 J Child & Adolescent Trauma 123 (2011) 12

Ida Kaplan et al., Cognitive Assessment of Refugee Children: Effects of Trauma and New Language Acquisition, 53.1 Transcultural Psychiatry 81 (2016) 8

Audrey Sheehey, Sexual Assault in the Refugee Camp, Harvard Political Rev. (Oct. 17, 2016), at http://harvardpolitics.com/hprgument-posts/sexual-assault-in-refugee-camps/ 10

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United Nations High Comm'r for Refugees, Global Trends: Forced Displacement in 2015 (2015), at http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends- 2015.html 8

U.S. Refugee Processing Center, "Refugee Admissions Report" (May 31, 2017), at http://www.wrapsnet.org/s/Refugee-Admissions-Report-2017_05_31.xls 8

Emmy Werner, Children and War: Risk, Resilience, and Recovery, 24.02 Dev. & Psychopathology 553 (2012) 10

Richard Williams, The Psychosocial Consequences for Children of Mass Violence, Terrorism and Disasters, 19.3 Int'l Rev. Psychiatry 263 (2007) 9, 10

INTEREST OF THE *AMICUS CURIAE*[1]

The American Professional Society on the Abuse of Children ("APSAC") is the leading national organization for professionals serving children and families affected by child maltreatment, including abuse and neglect. A multidisciplinary group, APSAC achieves its mission through expert training and educational activities, policy leadership and collaboration, and consultation emphasizing principles that are both theoretically sound and evidence-based.

For 30 years, APSAC has played a central role in developing guidelines that address child maltreatment. It is qualified to inform the Court about the damage maltreatment can inflict on children's brain development and cognitive ability. APSAC submits this brief to assist the Court in understanding the impact of Executive Order 13,780 on the physical, emotional, and mental development of children, both those receiving its message of religious discrimination in the United States and those abroad suffering the consequences of exclusion from this country.

APSAC members have a direct and substantial interest in these issues because of their historical and scientific experience with juvenile brain development, especially where child maltreatment is involved. APSAC is therefore qualified to advise the Court on the

[1] No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amicus and its counsel, make a monetary contribution to the preparation or submission of this brief. *Amicus* affirms that it notified counsel of record for all parties of its intent to file this brief or June 7, 2017, and all parties consented to this filing.

impact of maltreatment on child health, wellbeing, and ability to survive.

SUMMARY OF ARGUMENT

Child health experts have found that exposure to early adversity and traumatic experiences can affect mental and physical health and well-being for a lifetime. A clear dose-response relationship between trauma and its health impacts means that the longer children stay in crisis-torn areas, the greater the ultimate harm to their brains and bodies.

The Government has asked this Court to stay the District Court's preliminary injunction, and thus to allow the Government to implement Executive Order 13,780 pending the Court's disposition of the case. Refugee children from the six nations targeted by the Order face acute risk of harm from trauma caused by violence, malnutrition, displacement, and the constant fear and uncertainty that accompany them. Thousands of children from these countries who would otherwise seek refuge in the United States will instead stay in refugee camps, experiencing additional months of trauma. That time is significant in the lives of these children and will cause additional harm to their long-term health and well-being.

Meanwhile, the millions of Muslim children in the United States, including citizens, face acute risk of harm from the poisonous atmosphere created by the religious animus that drips from Executive Order 13,780. It is foreseeable that this stressful experience will itself do damage to the long-term health and well-being of these children, just as childhood experiences of racial discrimination have been demonstrated to relate to long-term health problems.

For these reasons, APSAC urges this Court to reject the Government's application for a stay of the District Court's injunction.

ARGUMENT

I. STRESS AND TRAUMA EXPERIENCED DURING CHILDHOOD CAUSE LONG-LASTING PHYSIOLOGICAL AND PSYCHOLOGICAL HARM UNLESS TREATED.

Children undergo constant physical, mental, and emotional development. Their experiences help shape their personalities and health, both now and into their futures as adults. Traumatic and stressful experiences produce genuine physiological changes, which ultimately cause physical and mental problems that can persist throughout the life of a person exposed to adverse experiences during childhood.

Research has begun to reveal physiological pathways for this connection between childhood stress and trauma and adulthood disorders and diseases. Stress is a physical condition, involving changes in hormones and other physiological signals. These changes cause further metabolic shifts as part of an adaptive mechanism by which humans, like other organisms, manage difficult conditions.

Repeated stress, and especially persistent stress, can be toxic, especially in children. Physiological stress response mechanisms become dysregulated, resulting in long-term shifts in metabolism that affect every bodily system, including the brain. The brain continues to develop throughout childhood and early adulthood, and a persistent stress metabolism harms the developing brain.

As a whole, "a maladaptive response to stress during childhood, referred to as a toxic stress response, plays an important role in the pathway from early adversity to disease."[2] As the American Academy of Pediatrics recently noted, "fear and stress, particularly prolonged exposure to serious stress—known as toxic stress—can harm the developing brain and negatively impact short- and long-term health."[3] The damage to physical and mental health and well-being can be severe.

II. REFUGEE CHILDREN IN COUNTRIES AFFECTED BY THE EXECUTIVE ORDER FACE CONTINUING STRESS AND TRAUMA.

Executive Order 13,780 would prohibit entry into the United States by refugees from six countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen. The District Court preliminarily enjoined the implementation of § 2(c) of the Order, which would generally prohibit entry by nationals of these six countries; and of § 6, which would suspend the entry of refugees under the U.S. Refugee Admissions Program. A stay of the District Court's preliminary injunction would expose thousands of children in these countries to continued trauma, causing additional long-term physical, mental, and emotional harm.

[2] Monica Bucci et al., Toxic Stress in Children and Adolescents, 63 Advances in Pediatrics 403, 404 (2016).

[3] Fernando Stein, AAP Statement on Revised Immigrant and Refugee Travel Ban Executive Order, American Academy of Pediatrics (Mar. 6, 2017).

A. Children in the six affected countries are exposed to harsh and dangerous conditions.

The countries affected by the Order include some of the most disordered areas in the world, areas where it is particularly dangerous to be a child.

Syria, the world's largest producer of refugees, is now in the sixth year of continuous conflict. According to the United Nations Children's Fund, more than 6 million Syrian children are in "immediate" need of humanitarian aid.[4] Millions of children witness unrelenting and brutal violence. 1.75 million children in Syria are no longer in school.[5] At least 652 children were killed last year (a 20% increase from the prior year); 255 died in or near a school.[6] As families get more desperate, more children are being pushed into child marriage and child labor.[7]

In Yemen, 7 million people are short of food, and 2.2 million children are malnourished.[8] Half a million

[4] United Nations Children's Fund, "Humanitarian Action for Children: Syrian Arab Republic," p.1 (2017), at https://www.unicef.org/appeals/files/2017_Syria_HAC(2).pdf.

[5] United Nations Office for the Coordination of Humanitarian Affairs, "Humanitarian Needs Overview: Syrian Arab Republic," p.37 (Dec. 2016), at https://docs.unocha.org/sites/dms/Syria/2017_Syria_hno.pdf ("*OCHA Overview*").

[6] United Nations Children's Fund, "Hitting Rock Bottom," pp. 4-5 (Mar. 2017), at https://www.unicef.org/media/files/UN055709.pdf.

[7] *OCHA Overview*, at 6.

[8] United Nations Children's Fund, Press Release, "Race Against Time to Save Millions of Lives in Yemen" (Apr. 25, 2017), at https://www.unicef.org/yemen/media_11858.html.

children are severely malnourished and at risk of imminent death unless they receive specialized medical care.[9] Many children suffer and die from preventable diseases. Yemen is also suffering a cholera outbreak—the second in six months—and children are the population most vulnerable to the disease.[10] Seven million children have no access to health care. Two million children are not in school.[11]

In Somalia, the number of severely malnourished children was up 50% in May 2017 compared to May 2016, to 1.4 million. There is a "triple threat" of disease, drought, and displacement. Outbreaks of malaria and cholera are imminent. The situation has pushed 40,000 children out of school. Some are working, others have fallen prey to military recruiters.[12]

B. Implementation of Executive Order 13,780 would lead to continued stress and trauma for a significant number of children.

In fiscal year 2015, the United States admitted over 15,000 refugees from the six Muslim-majority

[9] *Id.*

[10] United Nations Children's Fund, Press Release, "Children of Yemen Are In the Grip of the Second Cholera Outbreak in Six Months" (May 22, 2017), at https://www.unicef.org/yemen/reallives_11968.html.

[11] United Nations Children's Fund, "Falling Through the Cracks: The Children of Yemen," p.2 (Mar. 2017), at https://www.unicef.org/yemen/Yemen2Years-children_falling_through_the_cracks.pdf.

[12] United Nations Children's Fund, Press Release, "Projected Number of Severely Malnourished Somali Children Up 50 Percent" (May 2, 2017), at https://www.unicef.org/somalia/media_19882.html.

countries that the Order affects.[13] The United States does not report on the ages of refugees, but globally over half of refugees were children at the end of 2015.[14] So it seems reasonable to expect that thousands of children have come to the United States from the six countries each year as refugees, and each year thousands more would come so long unless § 2(c) or § 6 of the Order is implemented.

To be sure, if the United States ceases to be available as a haven for these refugees, in principle they could go elsewhere. But the dire situations in Syria and other countries have produced the largest population of refugees that the world has seen for decades.[15] Eliminating one potential destination will, as a realistic matter, mean fewer children will find homes in countries of refuge. More will remain in refugee camps in their home or in neighboring countries.

Even a temporary ban on entries from the six countries would have that result. The international refugee system does not switch destination countries quickly. If the United States refuses to admit refugees

[13] U.S. Refugee Processing Center, "Refugee Admissions Report" (May 31, 2017), at http://www.wrapsnet.org/s/Refugee-Admissions-Report-2017_05_31.xls.

[14] United Nations High Comm'r for Refugees, Global Trends: Forced Displacement in 2015, p.8 (2015) ("UNHCR 2015 Report"), at http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends- 2015.html.

[15] *Id.* at 5. *See also* Ida Kaplan et al., Cognitive Assessment of Refugee Children: Effects of Trauma and New Language Acquisition, 53.1 Transcultural Psychiatry 81, 82 n.50(2016) (noting that half of refugees in 2013 were children).

from the affected countries for, say, six months pending this Court's review,[16] thousands more refugee children will simply sit in the traumatic conditions of refugee camps for another six months. Where severe food shortages exist, six months can mean the difference between severe malnutrition and death. And in the overall burden of trauma and stress borne by children in these countries, another six months is significant because longer exposure leads to further health problems.

C. Refugee camps expose children to violence, trauma, and stress.

Life in a refugee camp is unstable; refugees often struggle to find food, water, and shelter.

Moreover, children are adversely affected by the "collapse of social networks and daily routines."[17] The psychological trauma involved can "wield a severe blow to a child's sense of security and self, including central organising fantasies and meaning structures."[18] Children are developing, both neurologically and psychologically, the ability to understand who they are and how they relate to the world. The uncertainties of life of a refugee can "effect great damage

[16] *Amicus* notes that while the pauses in §§ 2(c) and 6 purport to be temporary—90 days and 120 days respectively—the Order offers no reason to think the United States would resume general admissions from the six countries after that period.

[17] Richard Williams, The Psychosocial Consequences for Children of Mass Violence, Terrorism and Disasters, 19.3 Int'l Rev. Psychiatry 263, 264 (2007).

[18] *Id.*

. . . because of the lingering need to re-evaluate one's view of oneself and the world."[19]

Refugee camps are also violent.[20] This violence exacerbates the developmental harms from the violence that a refugee child fled in the first place. "Negative developmental effects appear more likely if children experience repeated or repetitive 'process' trauma or live in unpredictable climates of fear."[21]

Separation from parents is most likely to lead to depression, and enforced separation from parents increases the likelihood of poor health in old age by a factor of 3.6.[22]

Amicus stresses that children waiting six additional months in a refugee camp during the imposition of a stay by this Court would suffer materially more harm. There is a dose-response relationship between the experience of trauma and stress and the occurrence of long-term health problems. This effect causes multiple forms and instances of abuse to amplify the negative impact that each has on a child's mental and

[19] *Id.* at 268.

[20] *See, e.g.*, Audrey Sheehey, Sexual Assault in the Refugee Camp, Harvard Political Rev. (Oct. 17, 2016), at http://harvard-politics.com/hprgument-posts/sexual-assault-in-refugee-camps/; Tim Gaynor, "UNHCR concerned at reports of sexual violence against refugee women and children" (Oct. 23, 2015), at http://www.unhcr.org/ news/latest/2015/10/562a3bb16/unhcr-concerned-reports-sexual-violence-against-refugee-women-children.html.

[21] Williams, *supra* n.17, at 274.

[22] Emmy Werner, Children and War: Risk, Resilience, and Recovery, 24.02 Dev. & Psychopathology 553, 554-55 (2012).

physical health.[23] A child's spending more time under stress increases the probability of the individual's suffering diseases and mental health problems as an adult.

III. Children in the United States receiving a message of religious intolerance will likely suffer adverse health effects.

Every court that has contemplated Executive Order 13,780 or its predecessor has concluded that these orders were motivated by and give expression to a discriminatory animus against Islam and against Muslims. The United States is home to 3.3 million Muslims, approximately half of them children. If the Government implements § 2(c) or § 6 of Executive Order 13,780, those children will witness this religious discrimination and suffer from it. Reports have already described the fear and stress that American Muslim children have experienced from the anti-Muslim prejudice articulated in the Order.[24]

[23] Robert F. Anda et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 Eur. Arch. of Psychiatry & Clinical Neurosci. 174, 176 (2006). Scientists use the term "dose-response relationship" to mean that the impact of a deleterious substance or experience grows as the extent of exposure increases. *See, e.g.*, Amer. Acad. Pediatrics, Adverse Childhood Experiences and the Lifelong Consequences of Trauma 3 (2014) (stating that the effects of trauma and stress "multiply when the trauma continues, whether by repetition of similar stresses . . . or accumulation of disparate ones . . . The effect may be particularly severe when trauma involves the child's primary caregiving system.").

[24] *See, e.g.*, Jenée Desmond-Harris, "Crying is an everyday thing": life after Trump's "Muslim ban" at a majority-immigrant

Statements of animus are not a matter of words alone. Recent research on traumatic stress and early adversity suggests that experience of discrimination during childhood exacts a physical and psychic toll and ultimately increases an individual's risk of negative health outcomes.[25] Repeated encounters with negative portrayals of their race can cause children to experience toxic and chronic stress, particularly where such encounters make them feel less safe at school or in the outside world. Over time, toxic stress exerts a pernicious influence over mental and physical health, leading to greater risk of depression, suicide attempts, substance abuse, and a host of other ills.

These studies involve racial discrimination, rather than religious discrimination; widespread governmental discrimination on the basis of religion has of course been uncommon in the United States. But *amicus* considers it likely that that religious discrimi-

school, Vox (Feb. 16, 2017), https://www.vox.com/identities/2017/2/16/14584228/muslim-ban-trump-immigration-ban-children-kids-schools-anxiety.

[25] *See, e.g.*, M. Jernigan and J. H. Daniel, Racial Trauma in the Lives of Black Children and Adolescents: Challenges and Clinical Implications, 4 J Child & Adolescent Trauma 123, 130 (2011) ("The implications of perceived racial and ethnic discrimination . . . are overwhelmingly associated with negative mental health outcomes such as depression, stress, anxiety, and psychological distress."); P. Cronholm *et al.*, Adverse Childhood Experiences: Expanding the Concept of Adversity, 49(3) Am. J. Preventive Medicine 354, 358 (2015) ("[S]tudies from different contexts have shown that witnessing or experiencing . . . discrimination is associated with concurrent negative health effects and increased participation in risk behaviors.").

nation will have comparable effects, because the underlying mechanism probably involves, in part, the physiological response to stress discussed above.

In short, it is not simply un-American to expect American Muslim children to put up with such vitriol from their own country; it is physically, mentally, and emotionally harmful.

CONCLUSION

A stay of the District Court's judgment would directly cause or increase harm to myriad children, including citizens of the United States. For the reasons set forth above and those discussed in the brief of the respondents opposing the application, the Court should deny the application.

Respectfully submitted.

MARY KELLY PERSYN
Counsel of Record
PERSYN LAW & POLICY
912 COLE STREET PMB 124
SAN FRANCISCO, CA 94117
(628) 400-1254
marykelly@persynlaw.com

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